

#### § 221.77

held at the office of the Hearing Officer. A request for a change of location of a hearing or transfer to another Hearing Officer must be in writing and state the reasons why the requested action is necessary or desirable. Action on the request is at the discretion of the Hearing Officer.

(d) A Party who has requested a hearing may amend the specification of the issues in dispute at any time up to 10 days before the scheduled date of the hearing. Issues raised later than 10 days before the scheduled hearing may be presented only at the discretion of the Hearing Officer.

#### § 221.77 Disclosure of evidence.

The Party shall, upon request, be provided a free copy of all the evidence in the case file, except material that would disclose or lead to the disclosure of the identity of a confidential informant and any other information properly exempt from disclosure.

#### § 221.79 Request for confidential treatment.

(a) In addition to information treated as confidential under § 221.77 of this subpart, a request for confidential treatment of a document or portion thereof may be made by the Person supplying the information on the basis that the information is—

(1) Confidential financial information, trade secrets, or other material exempt from disclosure by the Freedom of Information Act (5 U.S.C. 552);

(2) Required to be held in confidence by 18 U.S.C. 1905; or

(3) Otherwise exempt by law from disclosure.

(b) The Person desiring confidential treatment must submit the request to the Hearing Officer in writing and the reasons justifying nondisclosure. The Hearing Officer shall forward any request for confidential treatment to the appropriate official of the Maritime Administration for a determination hereon. Failure to make a timely request may result in a document being considered as nonconfidential and subject to release.

(c) Confidential material shall not be considered by the Hearing Officer in reaching a decision unless—

#### 46 CFR Ch. II (10–1–98 Edition)

(1) It has been furnished by a Party; or

(2) It has been furnished pursuant to a subpoena.

#### § 221.81 Counsel.

A Party has the right to be represented at all stages of the proceeding by counsel. After receiving notification that a Party is represented by counsel, the Hearing Officer will direct all further communications to that counsel.

#### § 221.83 Witnesses.

A Party may present the testimony of any witness either through a personal appearance or through a written statement. The Party may request the assistance of the Hearing Officer in obtaining the personal appearance of a witness. The request must be in writing and state the reasons why a written statement would be inadequate, the issue or issues to which the testimony would be relevant, and the substance of the expected testimony. If the Hearing Officer determines that the personal appearance of the witness may materially aid in the decision on the case, the Hearing Officer will seek to obtain the witness' appearance. The Hearing Officer may move the hearing to the witness' location, accept a written statement, or accept a stipulation in lieu of testimony.

#### § 221.85 Hearing procedures.

(a) The Hearing Officer shall conduct a fair and impartial proceeding in which the Party is given a full opportunity to be heard. At the opening of a hearing, the Hearing Officer shall advise the Party of the nature of the proceedings and of the alleged violation.

(b) The material in the case file pertinent to the issues to be determined by the Hearing Officer shall first be presented. The Party may examine, respond to and rebut this material. The Party may offer any facts, statements, explanations, documents, sworn or unsworn testimony, or other exculpatory items that bear on the issues, or which may be relevant to the size of an appropriate penalty. The Hearing Officer may require the authentication of any written exhibit or statement.

(c) At the close of the Party's presentation of evidence, the Hearing Officer